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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN STEAMSHIP OWNERS
MUTUAL PROTECTION AND INDEMNITY
ASSOCIATION, INC.,

Plaintiff,

v.

ALCOA STEAMSHIP CO., INC., FOSS
MARITIME COMPANY, *et al.*,

Defendants.

NO. 04-CV-4309 (LAK)

**ANSWER OF DEFENDANT
FOSS MARITIME COMPANY
TO PLAINTIFF'S SECOND
AMENDED COMPLAINT**

Defendant Foss Maritime Company ("Foss"), as so named in Exhibit A to American Steamship Owners Mutual Protection and Indemnity Association, Inc.'s (the "American Club" or "Club" or "Association" or "Corporation") Second Amended Complaint (the "Complaint"), by and through its attorneys, Garvey Schubert Barer, as and for its answer to the Complaint alleges on information and belief as follows:

1. Defendant Foss admits that the relief as stated is that which is sought by the plaintiff.

2. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 2 and therefore leaves plaintiff to its proof.

3. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 3 and therefore leaves plaintiff to its proof.

4. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 4 and therefore leaves plaintiff to its proof.

5. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 5 and therefore leaves plaintiff to its proof.

6. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 6 and therefore leaves plaintiff to its proof.

7. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 7 and therefore leaves plaintiff to its proof.

8. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 8 and therefore leaves plaintiff to its proof.

9. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 9 and therefore leaves plaintiff to its proof.

10. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 10 and therefore leaves plaintiff to its proof.

11. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 11 and therefore leaves plaintiff to its proof.

12. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 12 and therefore leaves plaintiff to its proof.

13. Defendant Foss admits it is aware of the Club's termination of the Discretionary Practice. As to the remaining allegations of paragraph 13, Foss is without

sufficient information to admit or deny the allegations therein and therefore leaves plaintiff to its proof.

14. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 14 and therefore leaves plaintiff to its proof.

15. Defendant Foss admits the allegations of paragraph 15 to the extent that Foss is and has been a member of the American Club since February 20, 1987. As to the remaining allegations of paragraph 15, Foss is without sufficient information to admit or deny the allegations therein and therefore leaves plaintiff to its proof.

16. Defendant Foss neither admits nor denies the allegations contained in paragraph 16 as the allegations therein are conclusions of law.

17. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 17 and therefore leaves plaintiff to its proof.

18. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 18 and therefore leaves plaintiff to its proof.

19. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 19 and therefore leaves plaintiff to its proof.

20. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 20 and therefore leaves plaintiff to its proof.

21. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 21 and therefore leaves plaintiff to its proof.

22. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 22 and therefore leaves plaintiff to its proof.

23. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 23 and therefore leaves plaintiff to its proof.

24. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 24 and therefore leaves plaintiff to its proof.

25. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 25 and therefore leaves plaintiff to its proof.

26. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 26 and therefore leaves plaintiff to its proof.

27. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 27 and therefore leaves plaintiff to its proof.

28. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 28 and therefore leaves plaintiff to its proof.

29. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 29 and therefore leaves plaintiff to its proof.

30. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 30 and therefore leaves plaintiff to its proof.

31. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 31 and therefore leaves plaintiff to its proof.

32. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 32 and therefore leaves plaintiff to its proof.

33. Defendant Foss neither admits nor denies the allegations contained in paragraph 33 as the allegations therein are conclusions of law.

34. Defendant Foss neither admits nor denies the allegations contained in paragraph 34 as the allegations therein are conclusions of law and Insurance Law section 1211 speaks for itself.

35. Defendant Foss neither admits nor denies the allegations contained in paragraph 35 as the allegations therein are conclusions of law and Insurance Law section 4111 speaks for itself.

36. Defendant Foss neither admits nor denies the allegations contained in paragraph 36 as the allegations therein are conclusions of law and the Club's By-Laws speak for themselves.

37. Defendant Foss neither admits nor denies the allegations contained in paragraph 37 as the allegations therein are conclusions of law.

38. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 38 and therefore leaves plaintiff to its proof.

39. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 39 and therefore leaves plaintiff to its proof.

40. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 40 and therefore leaves plaintiff to its proof.

41. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 41 and therefore leaves plaintiff to its proof.

42. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 42 and therefore leaves plaintiff to its proof.

43. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 43 and therefore leaves plaintiff to its proof.

44. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 44 and therefore leaves plaintiff to its proof.

45. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 45 and therefore leaves plaintiff to its proof.

46. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 46 and therefore leaves plaintiff to its proof.

47. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 47 and therefore leaves plaintiff to its proof.

48. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 48 and therefore leaves plaintiff to its proof.

49. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 49 and therefore leaves plaintiff to its proof.

50. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 50 and therefore leaves plaintiff to its proof.

51. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 51 and therefore leaves plaintiff to its proof.

52. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 52 and therefore leaves plaintiff to its proof.

53. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 53 and therefore leaves plaintiff to its proof.

54. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 54 and therefore leaves plaintiff to its proof.

55. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 55 and therefore leaves plaintiff to its proof.

56. Defendant Foss neither admits nor denies the allegations contained in paragraph 56 as the allegations therein are conclusions of law.

57. Defendant Foss admits it is aware of the Board's resolution to terminate the Discretionary Practice. As to the remaining allegations of paragraph 57, Foss is without sufficient information to admit or deny the allegations of contained therein and therefore leaves plaintiff to its proof.

58. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 58 and therefore leaves plaintiff to its proof.

59. Defendant Foss neither admits nor denies the allegations contained in paragraph 59 as the allegations therein are conclusions of law.

60. Defendant Foss neither admits nor denies the allegations contained in paragraph 60 as the allegations therein are conclusions of law.

61. Defendant Foss neither admits nor denies the allegations contained in paragraph 61 as the allegations therein are conclusions of law.

AS TO THE FIRST CAUSE OF ACTION

62. Responding to the allegations contained in paragraph 62 of the Complaint, Foss repeats and realleges its answers to paragraphs 1 through 57 of the Complaint as if fully set forth in full herein.

63. Defendant Foss neither admits nor denies the allegations contained in paragraph 63 as the allegations therein are conclusions of law.

64. Defendant Foss admits that the American Club seeks such a declaration as stated in paragraph 64.

AS TO THE SECOND CAUSE OF ACTION

65. Responding to the allegations contained in paragraph 65 of the Complaint, Defendant Foss repeats and realleges its answers to paragraphs 1 through 57 of the Complaint as if fully set forth in full herein.

66. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 66 and therefore leaves plaintiff to its proof.

67. Defendant Foss neither admits nor denies the allegations contained in paragraph 67 as the allegations therein are conclusions of law.

68. Defendant Foss admits that the American Club seeks such a declaration as stated in paragraph 68.

AS TO THE THIRD CAUSE OF ACTION

69. Defendant Foss repeats and realleges the answers to paragraphs 1 through 61 as if set forth below.

70. Defendant Foss is without sufficient information to admit or deny the allegations of paragraph 70 and therefore leaves plaintiff to its proof.

71. Defendant Foss neither admits nor denies the allegations contained in paragraph 71 as the allegations therein are conclusions of law.

FIRST AFFIRMATIVE DEFENSE

The Second Amended Complaint fails to state a cause of action upon which relief may be awarded.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims for relief as against Foss are barred by the doctrine of estoppel.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims as against Foss for relief are barred by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the statute of limitations.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff waived its claims against Foss.

WHEREFORE, Defendant Foss states that the Club should not be awarded attorneys' fees against Foss and Foss should recover attorneys' fees and costs and such other relief as this Court deems appropriate.

Dated: New York, New York
October 7, 2004

GARVEY SCHUBERT BARER

By 

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